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Memorandum

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TO: Interested Persons

FROM: Legislative Council Staff | 303-866-3521

SUBJECT: Overview of the Fiscal Notes Process

Summary

Fiscal notes are prepared by Colorado Legislative Council Staff (LCS) to provide the members of the Colorado General Assembly with the estimated impact of proposed legislation on state and local government revenue and expenditures. The fiscal note is a non-binding, decision-making tool for legislators and others to use when deliberating state policy.

What is a Fiscal Note?

Fiscal notes explain how proposed legislation impacts the expenditures of state agencies, state tax or fee revenue, and the expenditures and revenue of local governments. Fiscal notes provide a substantive summary of each bill, describe how the proposal changes current law, and estimate the change in state funding and staff needed to implement that change. Every bill and concurrent resolution is assessed by LCS and receives a published fiscal note for the first committee of reference. Fiscal notes are updated as bills move through the legislative process. A bill's fiscal note reflects the official estimates of LCS at a given point in the legislative process, and may be revised as the bill is amended or new information is received. The legislature decides whether and how to use the information provided in the fiscal note.

History of Fiscal Notes

Prior to 1989, the executive branch provided estimates to the General Assembly on the impacts of proposed legislation. House Bill 88-1329 created the fiscal note process¹ so that the General Assembly could receive an independent, nonpartisan assessment of legislation from legislative staff, rather than

Contents

Summary	1
What is a Fiscal Note?	1
History	1
Legal Requirements	2
State Agency Input	3
Fiscal Note Types	3
Distribution	4
Fiscal Notes and the	
Appropriations Process	4
Other Fiscal Note Products	4
Additional Resources	5

¹ Section 2-2-322 (1), C.R.S.

affected agencies. House Joint Resolution 89-1003 was adopted to create the necessary legislative rules and to designate LCS as the legislative service agency responsible for preparing a fiscal notes. Fiscal notes have been prepared for all proposed legislation since 1989.

Legal Requirements for Fiscal Notes

Legislative rules and state statute govern the fiscal note process.² As outlined, below, these rules and laws specify when and how fiscal notes are prepared, as well as information that must be included in fiscal notes when certain types of impacts or legal changes are made.

Legislative Rules

[Joint Rule 22](#) provides the general framework and authority for fiscal notes. Joint Rule 22 authorizes LCS to have access to confidential bill drafts to prepare fiscal notes (see below). It also outlines required information on the bill and its fiscal impacts that must be included in fiscal notes and the distribution of fiscal notes to committees. [House Rule 32A](#) and [Senate Rule 25 \(e\)](#) provide additional guidance on chamber-specific procedures related to fiscal notes, including requirements that a fiscal note be prepared prior to voting on bills at certain stages and a process for legislators to request an updated fiscal note, among other things.

Confidentiality

In order to meet the deadlines of legislative session, fiscal analysts have access to confidential bill drafts prior to a bill being introduced, but are legally obligated to keep that information confidential, just like the attorney drafting the bill. Joint legislative rules and state law permit the Office of Legislative Legal Services (OLLS) to provide preliminary copies of bills to LCS so that fiscal staff can commence their review and analysis, including sharing the bill with affected agencies with the sponsor's permission. Fiscal analysts and canvassed agencies must not reveal the contents or nature of such measures outside of discussions concerning the bill's fiscal impacts.³

Other Statutory Requirements

State law outlines various other requirements related to fiscal notes. Fiscal notes must:

- provide information about fee impacts on individuals, families, or businesses, where applicable;
- include a local government and school district impact;
- include the number of persons convicted of comparable crimes and related demographic information when a measure creates or modifies a criminal offense;
- include a five-year cost estimate for bills assessed as increasing incarceration in state prisons;
- indicate whether a health benefit mandate report is available through the Division of Insurance; and
- indicate whether a [Greenhouse Gas Emissions Report](#) has been prepared for a bill.

² Section 2-2-322 (1.5), (2), (2.5), (3), (4), and (5), C.R.S.; Section 2-2-701 (3) and (4), C.R.S.; Section 29-1-304.9, C.R.S.; Section 22-32-143, C.R.S.; and Section 1-40-105.5, C.R.S.

³ Section 2-3-505 (2)(a), C.R.S.

Input from State Agencies

Each state agency is required to provide information on the fiscal impact of a proposed measure in the manner and timeframe requested by the LCS Fiscal Notes section. This includes adhering to [Fiscal Notes Common Policies](#), which consist of cost standards related to FTE and certain expenses. State departments are asked to document all calculations and assumptions used in their estimate, and provide a narrative explanation of their analysis. LCS works with departments to set deadlines for estimating impacts, and then considers that input when preparing the fiscal note. Fiscal analysts also collect data from other sources and apply their own substantive knowledge of public programs to inform the analysis. Fiscal analysts provide an independent, nonpartisan evaluation of estimates made by state agencies, and accept, reject, or modify those estimates based on professional knowledge and judgement.

Departmental differences. The estimate in the fiscal note is the product of LCS and can vary from the estimate provided by departments. Analysts work with departments to arrive at an agreed upon estimate; however, when no agreement can be reached, departments may request that a departmental difference be included to document the agency's estimate, and the reason(s) it is not included in the fiscal note.

Types of Session Fiscal Notes

Fiscal notes for committees of reference. Legislative rules require a fiscal note for each bill and concurrent resolution prior to the bill's consideration in the committee of reference. The fiscal note is written to the introduced bill, with certain limited exceptions. This initial fiscal note is typically provided to the sponsor 24 to 48 hours prior to the committee meeting.

Fiscal notes for strike-below amendments. Joint Rule 22(b)(2)(A) and (B) allow the prime sponsor of a bill to request that LCS prepare a fiscal note for an amendment striking everything below the enacting clause (a SEBEC or strike-below amendment), in lieu of preparing a fiscal note on the introduced bill. The prime sponsor must provide LCS with the amendment, and obtain written permission from the leadership of the chamber in which the bill was introduced.

Revised fiscal notes. If a bill is amended, LCS may revise the fiscal note for its next consideration, typically the Appropriations Committee. Fiscal notes may be revised multiple times as a bill moves through the legislative process. Fiscal notes may also be updated to reflect new information or make technical corrections.

Fiscal note memos for amendments. Time permitting, LCS can assess the fiscal impact of amendments to bills and prepare a memorandum. When an amendment removes the fiscal impact, a memorandum from LCS permits the committee to route a bill to second reading, instead of the Appropriations or Finance committees.

Fiscal notes on demand. House Rule 32A (c) requires that LCS update or prepare a fiscal note on a bill prior to consideration of the bill on second reading, if so requested by at least ten members of the House. Senate Rule 25 (e) requires that a fiscal note be prepared or updated before a bill can be considered on second reading, if requested by at least five members of the Senate.

Final fiscal notes. Following adjournment of the legislature, a final fiscal note is prepared detailing any revised estimate, and if the bill was passed into law. The final fiscal note also tells readers if the bill's appropriation is consistent with the analysis and estimate in the fiscal note.

Distribution of Fiscal Notes

Fiscal analysts are in communication with bill sponsors throughout the writing process. Once a fiscal note is ready to publish, analysts will deliver fiscal notes to the sponsors before making the fiscal note public. Once the fiscal note is made public, it is distributed to legislators in their bill folders and through iLegislate, as well as published online through the [General Assembly's website](#).

Fiscal Notes and the Appropriations Process

Fiscal notes inform the budget-setting process. Each bill is assessed to identify the appropriation LCS believes is required to implement that bill, including any change in staffing levels. Once a bill is identified as requiring an appropriation (the authority to spend money), the committee of reference routes that bill to the Appropriations Committee for that body to determine the appropriation amount.

Prior to that hearing, the Joint Budget Committee (JBC) staff provide a separate, independent review the bill and the fiscal analysis prepared by LCS. Typically, the JBC analyst agrees with LCS and prepares an appropriation clause for the bill based on the information in the fiscal note. JBC staff may also prepare an updated analysis as a result of changes made to the bill, or as a result of new information. In some cases, JBC staff may disagree with the LCS analysis and provide a different analysis of the bill's fiscal impact. Legislators use the estimates made by LCS and JBC staff to decide how much to appropriate for a bill.

Other Fiscal Note Products

In addition to the regular fiscal notes process during legislative session, fiscal impacts are prepared for the different stages of citizen-initiated measures throughout the year and fiscal notes are prepared for each bill draft requested by interim committees.

Fiscal Impact Statements for Initiated Measures

LCS provides fiscal estimates and information for [citizen-initiated ballot measures](#) at various points in the initiative process, as outlined below.

Fiscal summary for Title Board. As a first step, LCS provides an initial fiscal summary for all measures appearing before the Title Board, which is the body tasked with setting the official title

and ballot question language for citizen initiated ballot measures. The fiscal summary must describe the measure's fiscal impact, including a preliminary estimate of the measure's effect on state and local government revenues, expenditures, taxes, and fiscal liabilities if implemented. It also includes a qualitative description of the economic impacts of the measure, and any other information from the initiated measure or description of government implementation necessary to describe the fiscal and economic impacts. The fiscal summary must be included on the signature petitions circulated by initiative proponents.

Fiscal impact statement. If the Title Board sets a title and the measure is approved to gather signatures, LCS prepares a fiscal impact statement on the measure, similar to the analysis provided for fiscal notes for bills. The full fiscal impact statement must be completed within two weeks after a measure is approved to gather signatures, and must be posted on the General Assembly's website.

Blue book analysis. Lastly, LCS prepares fiscal impacts statements for all ballot measures as part of the Voter Information Booklet (Blue Book) process, both for citizen-initiated measures and measures referred by the General Assembly. These fiscal impact statements are summarized in the Blue Book for each measure, and the full fiscal impact statement is posted on the General Assembly's website in both English and Spanish.

Fiscal Notes for Interim Committee Bills.

Legislative interim committees generally have the authority to recommend bills for introduction at the next regular session of the General Assembly. Bills recommended by an interim committee do not count against any individual member's five-bill limit. At the end of each interim, all such recommendations are subject to review and approval by the 18-member Legislative Council Committee before being introduced in the following regular session.

State law requires that a fiscal note be prepared for all bills considered by interim committees before the committee votes on sending bill recommendations to the Legislative Council. The law also requires that the deadlines for requesting bills be adjusted so that each interim committee is granted sufficient time to consider the fiscal note before voting to recommend legislation. If the bill is amended by the interim committee during the approval process, the fiscal note will be updated for the first committee of reference during the regular legislative session.

For More Information

Additional information is available at: www.colorado.gov/fiscalnotes. Interested persons often have questions about fiscal notes, particularly when the note identifies unanticipated costs. For this reason, the name, phone number, and email address of the analyst is published at the top of each fiscal note. Please contact the analyst with any questions specific to a given fiscal note.

Questions about the general process or other broader topics, can be directed to LCS offices at 303-866-3521 or to lcs.ga@state.co.us.